

DEPARTMENT OF INSURANCE
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FILED

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ADMINISTRATIVE LAW
BUREAU

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
FALLBROOK GLASS, INC.)	FILE NO. ALB-WCA-95-1
)	
Appellant,)	
)	
From a Decision of)	
)	
THE WORKERS' COMPENSATION)	
INSURANCE RATING BUREAU)	
OF CALIFORNIA,)	
)	
Respondent.)	

PROPOSED DECISION

This matter was heard before Administrative Law Judge Janice E. Kerr in Los Angeles on January 30, 1996.

Appellant, Fallbrook Glass, Inc. ("Fallbrook"), was represented by Gary S. Press, President, 616 E. Alvarado Street, Suite A, Fallbrook, California.

Respondent, Workers' Compensation Insurance Rating Bureau ("Bureau"), was represented by John N. Frye, Esquire, of the law firm of Frye & Alberts, 1901 Avenue of the Stars, Suite 390, Los Angeles, California, Warren J. Clark, Vice President of the

Bureau's Position

The Bureau is sympathetic to Fallbrook's plight but believes that the C & R's authority is limited to ensuring that the Manual rules are applied; it cannot resolve disputes between a broker or agent and appellant.

Discussion

The record clearly indicates that Fallbrook's employee did not devote 100% of his time to clerical/sales duties. Because he assisted in both the shop and the field, he must be assigned to the higher rated classification, Code 5462.

However, it is also clear that Fallbrook relied on the consistent advice of its insurance agent, Alan George, with Rubin Insurance Agency, that the employee could be assigned to two different classifications if adequate records were kept. George was not only consistent; he was adamant in his opinion.

Once it became clear that its insurer, Cal Comp, was going to insist on the higher classification, Fallbrook took appropriate action. It filed a complaint in Small Claims Court. No doubt due to unfamiliarity with legal procedures, however, Fallbrook named only Cal Comp as a defendant and failed to name Alan George and Rubin Insurance Agency.

The waters were further muddied by Cal Comp's characterization of the dispute as only a rating issue, rather than a good faith reliance issue as well, in appealing the Small Claims Court Order. In furtherance of this strategy Cal Comp


introduced the letter signed by the Bureau's Mr. Brundage which clearly states that the higher classification for glaziers should be used. While Cal Comp's efforts to characterize the dispute as a rating issue is understandable because it claims not to have given Fallbrook any misleading advice, it is unfortunate that this matter could not have been settled along the way rather than requiring Fallbrook to visit a myriad of forums.

In any event, since it is clear that, pursuant to the Manual rules, the correct classification to be assigned to Fallbrook's employee is Code 5462, given the facts presented here, the Commissioner cannot require that a different Code be assigned. The appropriate avenue for any relief would be for Fallbrook to file again in Small Claims Court this time naming at the least the insurance agency and agent.

ORDER

Therefore, IT IS ORDERED that Code 5462 should be assigned to Fallbrook's employee. The Bureaus' December 12, 1994 decision regarding Fallbrook is sustained. This decision and order is effective in 20 days.

DATED: March 6, 1996



JANICE E. KERR
Administrative Law Judge